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09/629,933	08/01/2000	John R. Tuttle	95-269.2	5711

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EXAMINER

ZIMMERMAN, BRIAN A

ART UNIT

PAPER NUMBER

2635

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 14

Application Number: 09/629,933
Filing Date: August 01, 2000
Appellant(s): TUTTLE, JOHN R.

Robert J. Stern
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/16/02.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences that will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that the claims do not all stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5214410	Verster	05-1993
5602535	Boyles	02-1997
5030807	Landt	07-1991

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Verster (5214410) and Landt (5030807) and Boyles (5602535).

Verster discloses mounting on each tagged object an RFID transceiver (20) and a portable transceiver unit having an antenna (12) but does not disclose adjusting performance parameters for reliable two-way communication range, and that the tag is a modulated back scatter transceiver.

In analogous art, Landt teaches a sensitivity control signal (38) and reception sensitivity (120 for the purpose of improving the error rate of the transmitting signal and the tag will back scatter modulate the signal from the interrogator.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized the reception sensitivity of Landt in the tag system

of Verster since such would improve the quality of the signal received thereby effecting the reliability range of the tag.

In an analogous art, Boyles suggests limiting the range of a transmitter receiver pair such that the distance between the transmitter and the receiver during operation is "only" slightly greater than closest distance between the transmitter and receiver pair to prevent the operation of other receivers, since they will be out of range.

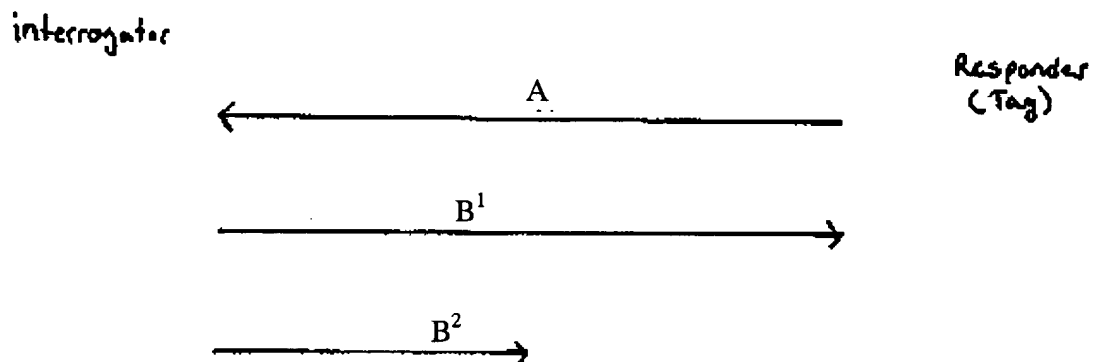
(11) Response to Argument

The appellant argues that Landt (nor the other references) does (do) not teach adjusting the two-way communication range of the transponder system. It is clear that the interrogation signal **defines** the range of the transponder. See col. 5 lines 1-34. Line 15+ discuss the communication in the interrogation direction (B as discussed by the applicant) is short. Furthermore, as defined by the applicant, the adjustment of the two-way communication range can occur in various manners, and the claims do not specify the manner of adjusting. The manner adjusting the two-way communication range discussed on page 7 line 14 (... or by reducing the receiver sensitivity...) is the exact manner disclosed by Landt.

Returning to the discussion of how Landt shows the claimed adjustment of the parameters of the two-way communication as defined by the specification. The appellant states that the two-way communication is defined as the lesser of the interrogation distance or response distance. The appellant argues that Landt does not discuss the distance relationship between the interrogation and response signals, but

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this is not entirely correct. Landt shows a tag operating in a write mode or a read mode where the range of signal B differs (Range directions discussed here are the same as those defined by the appellant). Landt states that the range of the wake up command in the write mode B^2 is less than the communication range of the read mode B^1 as shown in the figure below.



B^1 defines the read mode interrogation range and B^2 defines the write mode interrogation range and as discussed by Landt (col. 15 lines 1-35) B^2 is much less than B^1 . Since Landt is silent on any adjusting of the response range A, it is assumed that A is constant. In order for the transponder to operate in either a read mode or a write mode as defined by Landt, A must be greater than B^2 . If A were equal to or less than B^2 there could be no read only mode. A relationship between A and B^1 cannot be concluded from the disclosure of Landt, but it is concluded that B^2 is less than A. When the parameters of the Landt responder are changed to adjust from the read mode (B^1)

to the write mode (B^2) (as discussed in col. 5 of Landt) the two-way communication range has been changed since the lesser of the two distances (A or B) has been changed.

The appellant argues that Boyles is not a transponder system, and does not change the distance to be only slightly greater than the closest distance of other receivers to prevent operation of other transponders. The appellant is correct that Boyles is not a transponder in that there is no two-way communication. The appellant is incorrect in stating that there is no changing of the distance to be only slightly greater than the closest distance of other receivers to prevent operation of other devices, since this is exactly what is taught by Boyles (see figures 2b and 3b). As taught by Boyles, range adjustments are made to make the transmitter only reliably communicate to one receiver, thus making the effective range "only slightly" larger than the required distance for the one receiver.

Regarding the appellant's arguments of differing distances in the different groups of claims, the examiner points out that

Generally, differences in distances will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such distance is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In *re* Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955) (Claimed process which

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was performed at a temperature between 40°C and 80°C and an acid concentration between 25% and 70% was held to be prima facie obvious over a reference process which differed from the claims only in that the reference process was performed at a temperature of 100°C and an acid concentration of 10%). See also *In re Hoeschele*, 406 F.2d 1403, 160 USPQ 809 (CCPA 1969) (Claimed elastomeric polyurethanes which fell within the broad scope of the references were held to be unpatentable thereover because, among other reasons, there was no evidence of the criticality of the claimed ranges of molecular weight or molar proportions.). For more recent cases applying this principle, see *Merck & Co. Inc. v. Biocraft Laboratories Inc.*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989); *In re Kulling*, 897 F.2d 1147, 14 USPQ2d 1056 (Fed. Cir. 1990); and *In re Geisler*, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997). Therefore, the specific ranges claimed fit the described generic range of Boyles and would have been obvious choices in design of the above modified system.

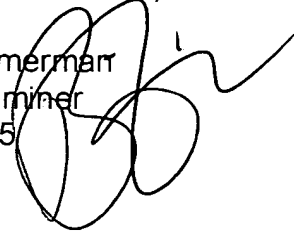
For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

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Primary Examiner
Art Unit 2635



BaZ
July 26, 2002

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